IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04/09/2002

Coram

The Honourable Mr. Justice P. SHANMUGAM
and
The Honourable Mr. Justice M. CHOCKALINGAM

Criminal Appeal No.65 of 1995

State, represented by
The Public Prosecutor,
Pondicerry. .. Appellant

-Vs-

Jayabalan .. Respondent

Prayer: Appeal against the judgment of the Third Additional Sessions Judge, Pondicherry dated 7.10.1994 in Sessions Case No.17 of 1993.

!For Appellants : Mr. A.P. Surya Prakash,
Addl. Public Prosecutor,
Pondicherry.

^For Respondent : Mr. A. Padmanabhan

:J U D G M E N T

P. SHANMUGAM, J.

The State represented by the Public Prosecutor has filed the above appeal against the order of acquittal passed by the Third Additional Sessions Judge, Pondicherry.

2. The accused is the husband. He was charged for an offence punishable under Section 302 of the Indian Penal Code for having beaten his wife Vasanthi with a blunt object, poured kerosene over her and set fire to her, thereby committing murder by intentionally causing the death of his wife on 29.5.1992 at about 9.20 am in his house at No.95 , Subbayya Nagar, Pondicherry. The Sessions Court found that the prosecution could not make out the case against the accused beyond reasonable doubt and acquitted the accused. The appeal is against this judgment.

3. The case of the prosecution is stated hereunder; the accused before the Sessions Court shall be hereinafter referred to as the

respondent :

The marriage between the respondent Jayabalan and Vasanthi, the deceased took place on 5.9.1988. They have two children, one aged 2-1/2 years and the other aged six months as on the date of the occurrence namely 29.5.1992. Vasanthi, comes from a big family of six children, consisting of four sisters and two brothers. She was employed as a Nurse in the T.B. Hospital, Pondicherry and the respondent was employed as a Teacher in Alankuppam Government School, Pondicherry. It was an arranged marriage and the couple were living separately, just opposite to the house of Vasanthi's parents, the two houses being divided by a 20' wide road. The respondent used to collect all the salary of Vasanthi and used to be very strict in allowing her to spend her money and he was in the habit of suspecting the fidelity of Vasanthi whenever she used to talk with a male person. Because of this, there used to be frequent quarrels between the couple. Some time in July 1992, two months prior to the death of Vasanthi, she is said to have complained to her parents that she could not live with the respondent any longer and that she had an apprehension that if she continued to live with him, he will kill her. However, her parents persuaded her to adjust with him since she had three younger sisters yet to be married and thereafter, she went back to her husband's house. Just 1 5 days prior to her death, there was a quarrel between the couple in connection with the ear-boring ceremony of their children. While the respondent wanted to spend lavishly and celebrate the ceremony along with the ear-boring ceremony of his brother' children, for which the deceased did not agree, but wanted a function as simple as possible without much expenditure. The ear-boring ceremony was fixed on 1.6.1 99 2.

4. While so, on Friday, the 29th of May 1992, Vasanthi came to her parents' house with her daughter and six months old son and took her breakfast. Thereafter, she went back to her husband's house. The girl was taken to her school by Vasanthi's sister. After she left her parents' house, Vasanthi's father took his wife, i.e. Vasanthi's mother to the Government Hospital, Pondicherry for some treatment. At about 9.10 am, when the baby started crying, Vasanthi's younger sister Chitra took the child, went to her sister's house which was opposite to their house, left the child there after informing about the same to her sister Vasanthi.

5. At about 9.25 am on 29.5.1992, the brother and sister of Vasanthi heard her screams. Immediately, they went to their sister' s house and found the respondent jumping and coming out from the bathroom without any clothes on his body. It was noticed that he had suffered burn injuries. The respondent is said to have requested P.W.1, the brother of Vasanthi, who had come there upon hearing the screams of her sister, to call for an auto-rickshaw. P.W.1 took up the baby and handed him over to his sister Chitra and requested Narayanan, their neighbour to fetch an auto-rickshaw. When the auto came, the accused got into it along with P.W.6, who was asked to accompany him. He went to the Jawaharlal Nehru Institute of Medical Education and Research, Pondicherry, and as per Ex.P.13, he was attended upon at 9.45 am for the burn injuries alleged to have been sustained by him while lighting a stove at 9.30 am at his house. As per Ex.P.14, the Medico-Legal Examination Report, the respondent was having pain and burn injuries all over his body and

he was conscious and oriented. He had no LOC/ Vomitting/Convulsions.

6. Coming back to the scene of occurrence, as per the prosecution case, P.W.1, the brother of Vasanthi, P.Ws.3 and 4, Vasanthi's sisters as well as P.W.5, their neighbour, heard Vasanthi's cries that she was burning and found that she was burning inside the bathroom. As the bathroom door was bolted from inside, they broke open the door with a crow-bar. They covered her with gunny bags and put off the fire. She was conscious while being lifted from the bathroom. When P.W.1 asked her what had happened, she had told that "Mama" - husband (accused/respondent) beat and burnt her pouring kerosene oil. They brought her to the hall and she breathed her last there. A fresh injury was noticed on the forehead of Vasanthi just above her left eye on the face and her body was completely burnt.

7. At about 9.30 am, one Premila, a neighbour, is said to have informed the Control Room, Pondicherry to the effect that a lady was burnt and was lying in the house at No.95, Subbayya Nagar. The said information was recorded by P.W.10, the Assistant Sub Inspector who was on duty at that time. The information was passed on by wireless to the D.Nagar Police Station. The Sub Inspector of Police from the Station House, in receipt of the information, left the police station with a police party to the place of occurrence and obtained a complaint, Ex.P.1 from P.W.1. Thereafter, he returned to the station and the said complaint was registered as Complaint No.123 of 1992 under Section 302 I.P.C. Ex.P.11 is the First Information Report, which was registered at 11.10 am on 29.5.1992 against the accused under Section 302 I.P.C. that on 29.5.1992 at 0920 hours at No.95, Subbayya Nagar, Pondicherry, the accused committed the murder of his wife Vasanthi by confining her inside the bathroom and set fire on her by pouring kerosene on her due to family dispute. P.W.14, the Inspector of Police started the investigation at 11.00 am and prepared the observation magazar.

8. Charges were framed against the accused dated 17.9.1993 under Section 302 I.P.C. and he was put on trial.

9. Fourteen witnesses were examined. P.Ws.1 to 6 are the prosecution witnesses who speak about the occurrence. P.Ws.7 to 9 are the witnesses for identifying the statements given by P.Ws.1 and 2. P.W.10 is the Assistant Sub Inspector working in the Control Room on 29.5 .19 92. P.W.11 is the Police Photographer. P.W.12 is the Junior Specialist in the Department of Forensic Science and Medicine. P.W.1 3 is the Sub Inspector of Police who got the complaint and registered the F.I.R. P.W.14 is the Inspector of Police who conducted the investigation.

10. Of these, P.W.1, the brother of Vasanthi and P.Ws.3, 4 and 5 are eye-witnesses. P.W.2 is the father of the deceased. P.W.6 is their neighbour who accompanied the respondent to the hospital.

11. The learned Sessions Judge, after considering the oral and documentary evidence, found that there were different versions given by the prosecution witnesses and that the evidence of P.W.5 did not support the case of the prosecution regarding the utterances of the deceased and that the

deceased was not in a fit condition to speak and that the medical report does not support the case of the prosecution and that the conduct of the respondent cannot be taken advantage of since he was in a disturbed state of mind as his wife was burning and that there was no sufficient motive to support the case of the prosecution. The learned Judge chose to give the benefit of doubt to the accused and hence acquitted him of the charges framed against him.

12. The learned Additional Public Prosecutor, Pondicherry assailed the order of the Sessions Judge on several grounds. According to him, there is clear evidence, both direct and circumstantial with sufficient motive to prove that the respondent has committed the heinous crime of burning his own wife. He further submits that the learned Judge has made much out of the minor contradictions without appreciating the core of the case of the prosecution. According to him, the learned Judge failed to see that the theory of suicide is totally ruled out in this case, and in the absence of acceptable explanation for the injuries found on the body of the respondent and the defence statement of the respondent himself, the action of the respondent in committing the murder is established beyond any shadow of doubt.

13. Learned Additional Public Prosecutor further submitted that the conduct of the accused in climbing over the wall and jumping out of the bathroom, wherein admittedly the deceased was burning and then, leaving the place without informing any one about the position of the deceased at that time is totally inconsistent with his plea of innocence and it is consistent with the proof of his guilt. The learned Sessions Judge, according to the Additional Public Prosecutor, has failed to see that the only inference that could be drawn in this case is that the accused is responsible for causing injury on the head of the deceased, pouring kerosene and burning her and also making good his escape from the scene of occurrence. He also submitted that the decisions referred to in the judgment of the Sessions Judge cannot be applied in favour of the respondent. He contended that the learned Judge misapplied and wrongly interpreted the medical evidence in support of the respondent. He, therefore, prayed that justice be done and the accused/respondent be found guilty of murder and given the maximum sentence for the serious offence against his own helpless wife.

14. The learned counsel Mr. A. Padmanabhan appearing on behalf of the respondent strenuously pleaded that if two views are possible, the court should lean towards the accused and give the benefit of doubt to him. According to him, the respondent had clearly set out his defence in his written statement and pleaded that in the facts and circumstances, the deceased had committed suicide and that the court has rightly found it to be so.

15. According to the learned counsel, there is a discrepancy with regard to the time of registration of the F.I.R. and the delay in forwarding the same to the Magistrate Court. He had also highlighted the different versions of P.W.4 in reference to the reporting of the incident and the nature of burn injuries suffered by the respondent to the extent of 60%.

He submits that the medical evidence falsifies the oral evidence. According to him, all the eye-witnesses are very closely related to the deceased, namely brother and sisters and hence, their evidence is unbelievable and is clouded by a feeling of revenge against the respondent. He further submits that the dying declaration of the deceased is not corroborated by any other evidence. He strongly relies on the decisions of the Supreme Court in support of his contention that if two views are possible, the court must adopt and accept the opinion in support of the accused. He also emphasises that the finding of the trial court, which had the advantage of seeing the demeanour of the witnesses, should not be lightly disturbed by the appellate court.

16. We have heard the learned Additional Public Prosecutor for the State and the learned counsel for the respondent and considered the matter carefully.

17. After going through the records and the evidence, we find that we have the advantage of the evidence of eye-witnesses, the medicolegal examination report as well as the defence statement of the respondent in order to come to a clear conclusion. Of course, this will be subject to the test and scrutiny of the oral and documentary evidence in accordance with law.

18. MOTIVE :
The deceased was married to the respondent on 5.9.1988 and has got two children out of their wedlock. Their marital life was not happy as per the evidence of both the prosecution witnesses as well as the defence statement of the respondent. to the prosecution, the appellant has a motive to murder her, whereas the defence attribute a motive for her to commit suicide. According to the written statement filed by the respondent under Section 313 readwith Section 233(2) of the Code of Criminal Procedure, the deceased did not like his parents and his support to them. She did not like the ear-boring ceremony of their children being conducted along with his brother's children. According to him, the deceased was an egocentric woman with a stubborn character. Whereas, according to the prosecution witnesses, the respondent did not allow the deceased to spend her money and she had to give all her salary to the respondent and the respondent was also suspecting her fidelity whenever she talked to male members. The prosecution witnesses also speak of her coming back to her parents' house two months prior to the occurrence, complaining that she could not live with the respondent any more and that if she continued to do so, the respondent would kill her. However, it was only after the persuasion of the parents of the deceased that since three younger sisters were in their house yet to be married and on their advice to adjust with the respondent, she went back to the respondent's house. Even 15 days prior to the occurrence, there was a quarrel between the couple with reference to the ear-boring ceremony of their children. According to the prosecution case, the respondent wanted to spend lavishly for that ceremony and wanted it to be conducted along with his brother's children, which the deceased objected to. Insofar as the last part of this difference of opinion is concerned, there is no controversy, since the respondent, in his written statement, has also admitted the same.

19. The fact that the deceased was not having a happy married

life has been spoken to by P.W.1, her brother and P.W.2, her father, who have stated that there were frequent quarrels between the deceased and the respondent in reference to his spending the money on his family members and that the respondent used to assault the deceased whenever such differences arose between them. P.W.3 also speaks of the deceased coming to their house two months earlier with a suitcase, stating that she would not live with the respondent any more as he used to beat her frequently and that her life was not safe in his hands. She, however, heeded to her parents' advice to bear with the respondent since her younger sisters had to get married and thereafter, she went back. P.W.4, another sister, also speaks of the frequent quarrels and the difference of opinion between the couple. She also says that two months prior to her death, the deceased came away to their house with a determination not to join her husband. It was only their parents who advised her to go back to his house as her other sisters had to get married. Once again, a fortnight before her death, there was a misunderstanding between them in connection with the ear-boring ceremony of their kids. Ex.P.1, complaint, which was given by P.W.1, also mentions about the fact that the respondent used to be very strict in the handling of the salary money of the deceased and that two months prior to the occurrence, the deceased came away to her parents' house with a bag and luggage and that the parents had counselled her and sent her back on the same day to the respondent's house. The complaint also refers to the quarrel between the deceased and the respondent in reference to the ear-boring ceremony on 28.5.1992.

20. Though P.Ws.1 to 4 are closely related, their evidence is clear and categorical in reference to the frequent quarrel between the deceased and the respondent, the beating and the ill treatment received by the deceased at the hands of the respondent which compelled her to leave his house and come to her matrimonial home permanently and as to the persuasion of her parents to adjust and live with the respondent. As a matter of fact, the deceased had told them, which is spoken to by P.Ws.1 to 4 consistently, that if she goes back, her life will not be safe in the hands of the respondent. The complaint, which was given immediately thereafter, also speaks of this quarrel. The written statement also admits about the serious difference in reference to the ear-boring ceremony and also says that the deceased was an egocentric woman with stubborn qualities. The facts that the respondent suspected her fidelity, as this happened during a holiday tour and that from then onwards, the respondent did not like her talking to any male or female persons, has been spoken to by P.W.2, the father of the deceased; P.W.1, P.W.3 and P.W.4 also speak about the dislike of the deceased towards the respondent and of the facts that he did not like the deceased spending even her own salary and that he beat her and often quarreled with her on these accounts have been clearly spoken to by them and we find that their evidence is true. There is evidence to the fact that the deceased apprehended danger to her life and hence she came away with her bag and luggage to her parents' house and that she was compelled by her parents to go back to her house. We find that there were admittedly, frequent quarrels and the respondent had been strict on the deceased spending her salaries and suspecting her fidelity, and a stage reached when the deceased felt unsafe to live with him and hence came away with her bag for a separation. This was two months prior to the occurrence. The immediate quarrel started over the ear-boring ceremony, as admitted by

both. There was a refusal on the part of the deceased to participate in the ceremony with the respondent's relatives and her insistence was to make it simple affair. If the deceased were not to go in for the ceremony scheduled to be held on 1.6.1992, the respondent was bound to suffer. He admits that the deceased was stubborn and egocentric. This is what is stated in Ex.P.1, the complaint given by P.W.1 :

"vd; khkh FL:k;g jfuhW fhuzkhf mf;fh tre;jpia gyte;jkhf ghj;UKf;Fs; js;sp/ cs;gf;fkhf jhHpl;L/ mf;fhit jhf;fpa[k;/ mts; nky; kz;bzz;bza; Cj;jp jPitj;Js;shh;."

In these circumstances, the contention that there was no motive for the respondent to do away with the deceased or that they were living happily cannot be accepted.

21. OCCURRENCE : The fact that on 29.5.1992 at about 0920 hours, the deceased Vasanthi, the wife of the respondent, was burnt to death is not in dispute. But, the question that arises for determination is whether it was a murder, as contended by the prosecution or a suicide/accident as pleaded by the respondent.

22. To rule out the possibility of suicide, the following circumstances are relevant. Firstly, the deceased had gone to the house of her parents just across the street at 8.30 am on 29.5.1992 along with her children and took breakfast there. At that time, P.W.2, her father, told her that he was going to take her mother to the Government Hospital, for which the deceased is said to have replied that she was to attend her second shift duty and wanted her parents to come back quickly in order to leave her baby with them. Vasanth Kumar, another brother of the deceased (not examined), took Sowmiya, the first daughter of the deceased to the school, whereas the deceased left the baby in her parents' house and thereafter, she went back to her house. After some time, the baby started crying and therefore, P.W.3, the younger sister of the deceased, took the child to her sister's house and after informing her sister, who was in the kitchen, that the boy was crying, she left him in the house and went back to their house. According to her, she was also observing whether her sister takes care of the child. Within minutes, she saw the respondent taking the child and therefore, she came back to their house. This was at 9 am. Therefore, if there was any problem for the deceased at that time, she had the full opportunity to tell the same to her parents and her brother and sisters who were available at the house at that time. On the other hand, she has informed her father that she was having second shift duty and had requested them to come back early. Even though the respondent has stated, on his being questioned, that the deceased had attempted to commit suicide on earlier occasions, there is absolutely no evidence in support of that claim.

23. Secondly, apart from this oral evidence, it could be seen that the bathroom, where the deceased is said to have been burnt, is said to be a small cramped room measuring 4'1" x 4'1" with a low wall of 4

' height. The bathroom is accessible to anybody to jump over the 4' wall and

a person can observe easily as to what is happening inside the bathroom. Thirdly, there are two rooms in the respondent's house, namely a bedroom and a reading room, of which the bedroom is available without any disturbance or access from outside. Fourthly, the child aged six months was left in the respondent's house and the deceased had the opportunity to leave the child safely in her parents' house, but she did not do so. Fifthly, she was not alone in the house so as to attempt a suicide as any of her attempts could be thwarted.

24. Sixthly, P.W.12, Doctor R. Balaraman, Junior Specialist of Forensic Medicine, has stated in his chief-examination, "If a person pours kerosene by himself or herself on head, it would spread over the back also". Ex.P.8, the Post- Mortem Examination Report says that there were epidermo-dermal burns present all over the body excepting back of chest, abdomen and right foot. Seventhly, the observation magazar, Ex.A.2 states about the finding of 18 burnt match sticks, two unburnt match sticks and a burnt match box. The preliminary particulars of the deceased as recorded in Ex.P.7 by the Inspector of Police found, on the body of the deceased, above the left eye-brow, an incised wound and in Column No.3, it is stated that the said injury appears to have been caused by a sharp weapon. The Post-Mortem Certificate also says that there is a lacerated injury 2.5 x 1 cm bone deep present over the forehead on left side. The doctor, in his chiefexamination says, "lacerated injury found on the left forehead of the deceased was fresh". Of course, he says in the cross-examination that the lacerated injury on the left forehead would have been caused by coming into contact with any hard object. He further says that if intense is applied, cracks and fissures occur on the skin and that they may resemble incised or lacerated injuries. In Ex.A.7, the requisition to conduct the post-mortem addressed to the Resident Medical Officer in reference to the body of the deceased, it is stated as follows :

"Column No.2 :
Injuries found on the body -
(1) A lacerated injury on the left side of the head over the left eye-brow.
(2) The body was found charred.
Column No.3 :
Type of weapons that would have been used for causing the injury -
(1) Sharp weapon appears to have been used. (2) Burn injuries."

From the records and the evidence, it is clear that the lacerated injury 2.5 x 1 cm is bone deep and that the injury could not have been a self-inflicted injury and hence, the suggestion that this could have been caused by the burns is not probable. When the deceased is found charred, why this lacerated injury alone should result out of the burns is not explained.

25. None of the prosecution witnesses namely the father, the brother and the sisters of the deceased speak of her possibility of committing suicide. The defence statement says that "Vasanthi should have committed suicide for reasons best known to her". There is no immediate statement made

prior to this incident by the deceased as per the defence statement. There should have been some wordy quarrel etc. between the respondent and the deceased which was preceded by the incident. The defence statement admits that she was of a stubborn character. From the evidence available, the circumstances of this case and the material objects found, we are clearly of the view that there is no scope for the suicide theory and that this cannot be a case of suicide.

26. Apart from the circumstantial and oral evidence, we have got the answers of the respondent given to the questions put to him by the Court under Section 313 Cr.P.C. and his defence statement under Section 233(2) Cr.P.C. The questions and the answers are extracted below for better appreciation :-

Q. No.11 : He (P.W.1) added that at about 9.25 am, he heard the screams of his deceased sister and immediately he came to your house and when he entered your house, he noticed you jumping and coming out from bath room and was not wearing any clothes, and on your chest and body, there were burnt injuries. What do you say ?
Ans.: On hearing the cries of my wife, I attempted to save her by jumping into the bath room as it was locked and since could not do so, I came out of it by jumping. In the process I sustained grievous injuries.

Q. No.12: He added that on seeing you he asked the reason for sustaining injuries and you asked him to call an autorickshaw and he asked his neighbour Narayanan to bring an auto, auto came and on seeing the auto, you got into it and left the place. What do you say ?
Ans.: I told him what had happened. (Not Clear) .....
I took the auto to the hospital, along with a person sent by him.

.....

Q. No.15: He added that they placed gunny bags on the body of the deceased and put off the fire, lifted the body and asked her what had happened, for which the deceased replied that you beat and burnt her pouring kerosene oil. What do you say ?
Ans.: I do not know whether she was alive or not. It is not true that I poured kerosene and set her fire.

Q. No.16 : He added that at that time, his sisters Subathira and Kanimozhi were following with the body and when they brought the deceased to the hall she lost her breath. What do you say ?
Ans.: I do not know whether she was alive.

.....

For Q. No.28, the accused has stated that she has committed suicide.

Q. No.35 : She (P.W.3) added that immediately, she and her sister ran to your house and noticed that you had burnt injuries and P.W.1 rushed out to fetch an auto and when the auto came, you got into it and left the place.

What do you say ?
Ans.: It is true. I told what had happened.

.....

Q. No.82 : Have you got anything to say in this case ?
Ans.: My deceased wife earlier attempted to commit suicide. (Not Clear) ..... She got that tendency. On the date of crime, I came to know about her burning only when I heard her screams noticed. I jumped into the bath room to save her. When I could not do so and since I was burnt and unable to open the bath room door, I jumped out of the room on hearing. I have not committed any crime. I am also filing the written statement and counter both under Section 313 Cr.P.C. read with 233(2) Cr.P.C."

27. The relevant portion of the written statement translated reads as follows :

"On the date of occurrence just prior to 9 or 9.30 am, the deceased told me that ear-boring ceremony should not be conducted along with my family members. I did not agree. I was reading in my reading room. The main door was kept open. Suddenly I heard groaning sound. Then itself there was a smoke. I was wearing lungi. I was putting on a turkey towel on my body. There was fire leaping from the bathroom. There was full of smoke. Since the bathroom door was locked from inside, I climbed over the bathroom wall and jumped inside. First, I tried to open the bathroom door so as to bring Vasanthi outside. My left hand thumb was injured in that process. Further, the bathroom was a small place. Since Vasanthi was lying across the bathroom over the stove and her head was broken, I suffered burn injuries and I could not manage, so I came back by jumping. I was feeling thirsy and my tongue was struck and I could not talk. I showed my hand towards the baby to the public who came inside the house. I became unconscious. Somebody from the public took an auto and sent me to a hospital. I was not steady and was in an unconscious state. The doctor asked me something, I could not talk. ..... Vasanthi, for reasons known to herself, should have poured kerosene from the stove and committed suicide. Or, while attempting to prepare hot water for the child, her saree should have caught fire and she should have fallen on the stove and got burnt. I have not poured kerosene on her. The evidence of P.Ws.1, 2, 3 and 4 is false. Vasanthi could not have told the words, "Mama (myself) beat and burnt me". The witnesses had seen the dead body only in the bathroom. They are giving evidence because of the enmity against me."

The case of the respondent is that he attempted to save his wife by getting into the bathroom and on his failure and on his getting burn injuries, he jumped over the bathroom wall and came out and went into the hospital with the assistance in an unconscious state. Even before the doctor, he could not say anything.

28. The above stand of the respondent is clearly falsified by the following evidence. Admittedly, the respondent was seen jumping over the bathroom wall by all the witnesses namely P.Ws.1, 3 and 4 and it is admitted

by the respondent himself that he jumped over the bathroom wall and came out. It is the further case of the prosecution witnesses that he was not wearing any cloth on his body at that time. This was clearly spoken to by P.W.1 in his evidence as well in his complaint to the police. The observation magazar Ex.A.2 also says that there was a burnt kaili inside. For question no.11 under Section 313 Cr.P.C., the respondent has not disputed as to his not wearing any cloth while jumping out the bathroom.

29. It is further seen from the evidence that the respondent answered to question no.12 that he had told P.W.1 as to what had happened. For question no.35 that he came out, got into the auto and left the place without telling anything, his answer was that he had told what had happened.

30. Ex.P.14, the Medico-Legal Examination Report of the respondent states as follows :

Name - and found the following : "Alleged to have sustained burn injuries while lighting a stove at 9.30 am on 29.5.1992 at his house." In reference to the column detailed 'description of injuries etc.', the doctor has stated as follows : "C/O pain and burning all over body. No H/O, LOC/Vomitting/Convulsions. Conscious oriented. Pulse 96/ minute REG. BP = 160/110 mm. The injuries suffered shown in the column is 1% on neck, 18% on the chest, 2% on the right fore arm, 4% on the left fore arm and totally 6% on both the legs. Some totalling 38 % burn injuries."

This statement recorded by the doctor falsifies the case of the respondent that he went to the rescue of his burning wife and jumped out due to his inability to help her. The admitted statement said to have been made by him after coming out, that he had told the people what had happened, cannot be true. If he had told so, the reaction of P.W.1 and others gathered there, would have been to save Vasanthi and give first aid to the respondent. Therefore, the written statement of the respondent that he was in an unconscious state after climbing over the bathroom wall and that he was not in a position to talk to anybody is clearly a false statement. On his own, he has stated that he had told what had happened and that he was found to be conscious and oriented and was able to tell the doctor that he had sustained the injuries while lighting a stove at his house. Considering the clear medical examination report with the thumb impression of the respondent, he cannot dispute that he did not say anything to the doctor. P.W.6, who had accompanied the respondent to the hospital, had stated that when the doctor asked the respondent how he sustained the injuries, he had replied that due to the bursting of the kerosene stove, he had sustained the injuries. Thereafter, the doctor had asked him to get a O.P. Chit in the name of the accused and he went and brought the O.P. Chit and gave it to the doctor and after leaving the respondent there, he left the place. In the statement of P.W.6 in the crossexamination, his statement that he did not remember whether the accused gave his answer to the doctor in English or in Tamil does not materially affect the answer of the respondent since he was accompanying the respondent for the purpose of admitting him in the hospital and the statement could have been only by the respondent himself. There is nothing to suspect the entries made by the doctor as the respondent was fully conscious as seen

from the facts and circumstances of the case.

31. The stand of the respondent that though his wife was burning inside the bathroom, he came out of the bathroom and left the house without uttering a word to all those assembled in the house and further that he did not help them to save his wife and his further conduct clearly prove the guilty mind of the respondent. The further circumstances available on this aspect are as follows :

(1) After climbing down the bathroom wall, he ought to have taken a cloth to wear and waited for the auto to arrive and should have travelled for a considerable time to reach the hospital and informed the doctor as to how he sustained the injuries. The medical report also says that he was conscious and oriented. Therefore, though the respondent was fully conscious, he did not choose to make any attempt to try to help the people to get his wife out of the bathroom and to give her the treatment. The plea of 'unconsciousness' is made only to get out of this unnatural conduct.

(2) His guilty mind is also further revealed from his assertion in the answer to the questions put to him by the court under Section 313

Cr.P.C. For the question that after the fire was put off, when the deceased was asked as to what had happened, she is said to have replied that the respondent had beaten and burnt her pouring kerosene oil, for which the respondent's answer was, "I did not know whether she was alive or not". For the next question that the deceased lost her breath only in the hall, the respondent says, "I do not know whether she was alive". From this, it is clear that the respondent was sure that his wife was dead in the bathroom and that should be the circumstances which impelled him to reply doubting about her replies or as to her breathing her last in the hall.

32. Apart from this, it is seen from the evidence that there are 18

burnt match sticks found in the middle of the bathroom which only shows that these match sticks should have been used for the purpose of burning the deceased. The first reaction of the respondent, on finding the alleged attempt of the deceased to commit suicide, is just to shout across the road for help to get the brother and sisters of the deceased; secondly, to find some material to stop the burning before jumping into the bathroom. On the contrary, he is said to have jumped into the bathroom without informing anybody, when the front door was kept very much open and when the relatives of the deceased were just 20' across the road, later came out of the bathroom, leaving his kaili/cloth in the bathroom, did not say what was happening in the bathroom and simply left for the hospital. This clearly shows that the respondent has deliberately acted to see that his wife died out of burn injuries. The 18 burnt match sticks, the burning of the front portion of the body of the deceased, the deep incised wound on the left forehead caused by either a blunt object or a sharp weapon and the burn injuries suffered by the respondent himself on both his fore arms, chest as well his legs only show

that it quite probable that the deceased was initially hit with a blunt object or a sharp weapon and was taken to the bathroom, laid there on the floor, kerosene was poured over her and all the match sticks were used in order to light the various parts of her body and after finding the whole body burning, the respondent ought to have bolted the door from inside to make it appear a suicide, climbed over the bathroom wall and jumped out. P.W.1, rushing into the house at that moment, seeing the respondent climbing out of the bathroom naked, should have asked him as to what had happened and that should have been the reason for his not informing P.W.1 or anybody else about the alleged fact that Vasanthi was committing suicide by burning herself or that he had sustained the injuries on his body while trying to help Vasanthi and his not making any attempt to help others to rescue Vasanthi. Instead, he tried to get out of the place by going to the hospital with the help of P.W.1 to get himself treated.

33. Apart from these clear circumstances pointing the needle of guilt towards the respondent, there is clear evidence of the oral testimony of P.Ws.1, 3, 4 and 5. All of them speak of the deceased uttering the words before she breathed her last that it was "Mama" (accused/respondent) who had beaten and burnt her pouring kerosene oil. The deceased is said to have stated so to P.W.1. P.W.3, the younger sister Chitra, also heard the deceased telling that 'Mama' (accused/ respondent) poured kerosene oil and set her on fire. P.W.4, another sister by name Subathira, also says that she heard the reply of the deceased that the accused/respondent beat her, poured kerosene on her and set her on fire. P.W.5 is an independent witness, their neighbour, who came running after hearing the cries of the sisters of the deceased and P.W.1. He helped them to break open the bathroom door, where he found the deceased lying and burning. According to him, himself and P.W.1, with the help of gunny bags, put off the fire and thereafter, both of them, with the help of P.W.3, lifted the body and while coming out with the body, at the entrance, they felt that she was still conscious and P.W.1 asked her what had happened, for which she is said to have said something and that she was murmuring. P.W.5, who is said to have stated in his statement under Section 161 Cr.P.C., that the deceased had stated that it is the respondent who had beat her and burnt her pouring kerosene oil, had later gone back and had stated that he could not hear anything about what she had stated and that she was murmuring. Therefore, he was treated as a hostile witness and in his cross-examination, he has denied the suggestion that he was disowning the said statement in order to help the accused.

34. It is argued on behalf of the respondent that the medical evidence is to the effect that the deceased should have died instantaneously, as delirium should have set in and hence, there was no possibility for her to utter the words alleged. The final opinion of the doctor in the post-mortem report as to the cause of the death of the deceased is, "Died of shock due to burns. Extent of burns 80%". The doctor, P.W.12, has stated in his chief-examination that on examination, he found sirngeing of scalp hair with smell of kerosene, epidermo dermal burns present all over body except back of chest and abdomen and right foot with a lacerated injury 2.5 x 1 cm, bone deep present over forehead on left side. According to him, the burns found on the body of the deceased could have been caused within ten minutes to halfan-hour.

In the cross-examination, he says that he found Mucosa congested, implying suffocation. This also, according to him, in turn, implies oxygen failing to reach the brain in the required amount. He states that the deceased had inhaled kerosene through smoke and it ought to have reached the lungs, from the lungs to the heart and then through other internal organs. He also states that if a person is set ablaze by sprinkling kerosene, it produces intense heat. The intense heat will cause unbearable pain. Then there will be loss of fluid. Because of the above symptoms and due to unbearable pain, unconsciousness supervenes preceded by poor respiration and feeble pulse and drop of blood pressure. This means in effect 'shock'. Shock means a state of profound depression of the vital processes of the body by reason of burns in this case. Shock implies disorientation. Disorientation means loss of normal relationship to one's surrounding with failure to comprehend time, place and people. The doctor further says as follows :

"If death has ensued immediately after the burning, death must have been preceded by delirium."

Taking advantage of this statement of the doctor that death should have preceded by delirium, it is contended that what the deceased had uttered should not be taken to have a meaning since it was uttered during a period of delirium. We are unable to agree with the said reasoning and argument.

35. Modi's Medical Jurisprudence and Toxicology - 22nd Edition, Chapter XI, at page 309, deals with the injuries from burns, scalds, lightning or electricity. Under the heading 'Classification of Burns', the effects of burns have been spoken to. Under the heading ' Extent of Total Body Surface Area' at page 312, this is what the author states :

"To estimate the amount of area affected by second or third degree burns in percentage (modern classification), the body is divided into different areas, each representing nine per cent. This is called the rule of nine. There is marked fluid loss resulting in shock when over 20 per cent of the body is affected and usually over 50 per cent is fatal.

Under the heading 'Causes of Death', this is what is stated :
"(i) Immediate Causes of Death
(a) Shock : Severe pain and marked protein rich loss from extensive burns which result in increased capillary permeability, cause shock and produce a feeble pulse, pale and cold skin, and hypotension resulting in death instantaneously or within 24 to 48 hours. In children, it may lead to stupor and insensibility deepening into come and death due to primary shock within 48 hours.

(b) Suffocation : Persons removed from houses destroyed by fire are often found dead from suffocation due to the inhalation of smoke, carbon monoxide and other irrespirable gases, which are products of combustion. In such a case, burns found on the body are usually postmortem. Toxic inhalation of combustion products of synthetic material may aggravate the anoxic effect produced by COHb."

The learned author also says that burns caused by kerosene oil are usually very severe and are known from its characteristic odour and the sooty blackening of body parts. The learned author says that a shock may result in death instantaneously or within 24 to 48 hours. Therefore, the statement of P.W.12 is taken out of context in order to support the theory that the deceased would not have uttered anything after the burn injuries.

36. Gradwohl's Legal Medicine - Second Edition, in Chapter XXI at page 380, under the heading 'burns by fire', says that destruction of victim by fire is one of the oldest methods used by murderers to conceal the crime and hence, every death by burning where the victim is found dead requires meticulous medico-legal scrutiny. The relevant extract of the learned author is as follows :

"The burns will usually commence lower on that side of the legs immediately opposite that part of the garment which first ignited. The only parts of the body spared are usually the lower legs, the inner sides of the thighs and the axillae, unless the victim has raised his arms. Even with most extensive burns, some period of survival is common, especially in the young. In one case, the driver of a chemical lorry which caught fire survived for 24 hours with full thickness skin burns involving his entire body, except for the soles of his feet."
.....
"Heat lacerations and any other injury should be recorded."
.....
"The presence of fine carbon particles in the trachea and bronchi, often intimately mixed with mucus, provides indisputable evidence that the decedent had inhaled smoke and had thus been alive in fire. Carbon-impregnating the mucus may be swallowed and be found in the stomach."

37. HWV Cox Medical Jurisprudence and Toxicology - XVII Edition at page 545, under the heading 'burns under special circumstances', has the following to say :

"Both homicide and suicide by burning is not all the uncommon and where inflammable fluids such as kerosene, gasoline or other organic liquids have been used, then there may be some obvious signs of trickling of the burning fluids over certain parts of the body. For instance, if a body is splashed with kerosene while lying on its back and then ignited, then there will be runs of burning liquid down the sides of the neck, sides of the trunk between the thighs and the other areas, especially where the clothing is absent in this area."

Under the heading 'suicide, accident or homicide, it is stated as follows :

"Whether a death is suicide, accident or homicide is largely a matter for the police investigation. As mentioned above, suicide by burning fluids is not uncommon and sometimes, the position of the body may be determined by the trickling marks of the fluid burns."

38. By going through the medical report and the authorities

on the subject, we find that the body of the deceased was lying in the bathroom on its back and that there were no burn injuries on the back side of the body. If really the deceased had committed suicide by pouring kerosene from her head, definitely the liquid would have spread both on the front as well as on the back side of the body and if really the deceased had ignited her body on her own, the fire would have spread and burns would have been caused both the front as well as on the back side of the body. From the position in which the body was found, it is clear that kerosene was poured on the deceased while the body was lying and it was ignited, as a result of which there are no burn injuries on the back side of the body. Even though the respondent has attempted to put forward the theory that the deceased would have died instantaneously and that she would not have survived, it is not supported by the medical evidence given in this case or the authorities cited above. On the other hand, it is seen that it is the accused who, in his response to the question under Section 313 Cr.P. C. as to the statement of the deceased that it was the accused who had beaten her, poured kerosene on her and burnt her, he has replied that he does not know whether she was alive or not.

39. Even P.W.5, who went back from his earlier statement, admits that the deceased was conscious when she was brought out of the bathroom and was murmuring and that she died when she was brought to the hall. It is P.W.1, the brother of the deceased, who went first inside the bathroom and says that he heard his sister crying that she was burning and behind him, two other sisters as well as P.W.5 were there. P.W.1, P.W.5 and P.W.3 lifted the body and at that time, she was conscious. All the three who lifted the body, including P.W.5, admit that she was conscious. It is P.W.1 who asked the deceased while lifting her as to what had happened and the deceased told him that the respondent beat and burnt her by pouring kerosene oil. Therefore, all the three eye-witnesses namely P.Ws.1, 3 and 4 speak clearly as to the replies of the deceased to P.W.1 to the same effect. Their evidence has not, in any manner, been shattered in the cross-examination.

40. Though the defence tried to say that there is a discrepancy with regard to the place of the occurrence and the place of the death, we do not find any such discrepancy. According to P.W.1, the deceased did not die in the bathroom and she had given a dying declaration inside the bathroom before they lifted her. P.W.1, in this regard, says as follows :

"Only after we lifted my sister and brought her back, I asked her what had happened. Inside the bathroom, my deceased sister did not die. I did state in Ex.P.1 that Vasanthi told that the accused poured kerosene and set her fire and that she has stated this inside the bathroom and before we lifted her, she died and that we brought her dead from the bathroom and laid her in the hall. What I have stated in Ex.P.1 is not correct. I have also told in my statement under Section 161 Cr.P.C. that Vasanthi died inside the bathroom, i.e. before we lifted her from the bathroom, she died. I had also added in that statement that we brought the dead body and laid in the hall. My statement to the police is also not correct. We did not put our ear near her mouth as what was telling was audible."

P.W.3, the sister of the deceased says as follows :

"Since they were not able to enter into the bathroom, standing outside, my brother and Narayanan placed some gunny bags on the body to put off the fire. At that time, my other sisters were also standing nearby. Later, my brother and Narayanan lifted my sister and asked her what had happened, for which she replied that Mama beat her, poured kerosene on her and set her on fire. I also helped them in lifting the body. Thereafter, we carried her to the hall and made her to lie on the ground. She lost her breath."

She has denied the suggestion in the cross-examination that she had told the police that as soon as the deceased informed them about the incident, she died and that they brought only the dead body to the hall. She has also denied the suggestion that in order to take revenge against the accused, she was deposing falsely. P.W.4 also says the same thing in her cross-examination as follows :

"We noticed that my sister was lying on the floor and burning. P. W.1 and Narayanan placed some gunny bags on the body of my sister and put off the fire. She was lying on the stove. P.W.1 and Narayanan lifted her and while bringing her to the hall, on enquiry by my brother as to what had happened, she replied back that Mama beat her, poured kerosene and set her fire. At that time, myself and my sister Kanimozhi were also present. Thereafter, we brought my sister to the hall and made her to lie on the floor. At that time, she lost her breath."

In the cross-examination, she says,

"my sister lost her breath immediately after replying to my brother. I did not know when my deceased sister was brought to the hall."

From the above, the learned Sessions Judge also found that there are different versions given during the cross-examination and in paragraph 44 of his judgment, he has found as follows :

"Altogether a different version was given during cross-examination by evidencing that only after lifting the deceased and bringing her out of the bath room he asked her what had happened and after saying so she died. Unfortunately, he asserted in his cross-examination, that what he had stated in Ex.P.1 and before the police are not true and only what he evidenced before this court is correct. Whereas, P.W.3 , sister of the deceased and P.W.1 who purported to have present when the deceased declared that the accused was responsible for her death, deposed in her chief-examination, that after carrying the deceased to the hall she last her breathe. During cross-examination, it was her version that the deceased told that the accused was responsible for her death, only after crossing the bathroom and not inside the bathroom. She also disowned her statement before the police that the deceased said those words inside the bathroom. The other sister, P. W.4 of the deceased and P.W.1, who according to the prosecution, was present when the maker told that the accused beat, poured kerosene and set her fire, informed her uncle Mohandoss about it. In her crossexamination, she

had categorically stated that she did not tell Mohanoss that the accused was responsible for the death of her sister."

In paragraph 62 of the judgment, the learned Judge further says that the only independent witness did not endorse the evidence of the interested witnesses P.Ws.1, 3 and 4 and that apart, the evidence is lacking on the part of the prosecution, whether the deceased was in a fit condition to make any statement as claimed by the prosecution.

41. Thus, we find that the learned Sessions Judge proceeded on the basis that in view of the apparent inconsistency between the place where the deceased had given her dying declaration and the impossibility of the deceased to utter the words as per the medical evidence, the prosecution has not established their case. We are to see that the bathroom is a small cramped place measuring 4'1" x 4'1" and when the deceased was burning and lying inside the bathroom, it would not have been possible for all the prosecution witnesses to enter the same. Admittedly, only two of them namely P.W.1 and P.W.5, Narayanan lifted her and they were taking her and removing her from the bathroom to the hall and in that process, P.W.1 and P.W.5 had to put off the fire with the help of gunny bags and thereafter she had to be lifted from the bathroom, in which P.W.3 also assisted them. In the process of lifting her and bringing her out of the bathroom, P.W.1 had asked her what had happened. There is no possibility for P.W.1 to ask the deceased what had happened, even when she was burning, without first putting of the fire and it is quite probable that P.W.1 should have first removed her from the bathroom before asking her what had happened. It stands to reason that a brother would have gone to the rescue of the deceased sister and to get her out of the situation before making enquiries as to the incident. As a matter of fact, P.W.1, not suspecting the conduct of the respondent, had first tried to help the respondent when he climbed out of the bathroom with burn injuries and it was he who tried to get an auto-rickshaw to enable the respondent to go the hospital for treatment, thinking that he had suffered burn injuries. Therefore, P.W.1, P.W.3 and P.W.4 could have heard the deceased saying about the involvement of the respondent only in the process of coming out of the bathroom before laying her in the hall. All the witnesses are clear that the deceased was conscious at that time and that she had implicated the respondent in the incident. As a matter of fact, excepting P.W.5 who went back later on his statement, the witnesses are clear that the deceased was audible and that she had told them as to what had happened. As we have seen earlier, the medical evidence does not support the case of the respondent, as found by the learned Sessions Judge.

42. Yet another infirmity, according to the defence, is that when P.W.4 informed about this incident to her maternal uncle Mohandoss, she did not tell him that the accused was responsible for the death of their sister. P.W.2, the father of the deceased, has stated that he was informed by his brother-in-law Mohandoss that his daughter caught fire with a stove and was serious. The argument of the counsel is that if really the deceased had stated that she was burnt by her husband, P.W.4 would have informed the same to her uncle, who in turn, would have informed this to P.W.2 in the same manner. Instead, what P. W.4 had informed was that Vasanthi caught fire with

stove and was seriuos. It is quite natural that when they informed the father without giving a shock about the occurrence, they would not have told him about the heinous nature of the crime. It is expected of relatives like Mohandoss to inform their close relatives like P.W.2 that his daughter had suffered serious burn injuries because of a fire with a stove. From this, it cannot be inferred that the deceased would not have stated about the incident. P.W.13, the Sub Inspector of Police who visited the scene of occurrence immediately after receipt of the wireless information, has stated that when he asked P.W.1 what had happened he orally told about the incident and on his asking, P.W.1 gave a written complaint, Ex.P.1, but did not reveal the time at which it was written. Both P.W.13 and P.W.14 have denied the suggestion that Ex. P.1 was prepared after the arrival of P.W.14 at the scene at 2 pm. From the records, it is seen that the information was given at 9.30 am to P.W.13 through a wireless message and that he arrived at the scene immediately thereafter and on receipt of the written complaint, the F.I.R. was registered at 11.10 am and after the investigation by P.W.14 and after taking of inquest over the dead body, the body was sent to the Government Hospital, Pondicherry and thereafter, he went to the accused and collected information regarding his admission in the hospital and on his enquiry, the accused did not say anything. Thus, we find that the report as well as the investigation commenced immediately thereafter and from Ex.P.11, it is seen that the F.I.R. was registered at 10.30 am and without any delay, steps were and on the same day, the F.I.R. was forwarded along with the complaint to the Judicial First Class Magistrate, Pondicherry. Though there is a discrepancy in reference to the place where the deceased breathed last, i.e. in Ex.P.1 complaint, it is stated that Vasanthi died before she was brought out of the bathroom and that they only brought the dead body in the hall. Whereas, in the evidence, all the witnesses categorically say that while the deceased was being removed from the bathroom to the hall, the deceased uttered the words implicating the respondent upon enquiry and that she breathed her last when she was laid in the hall. Considering the facts and circumstances of the case and the probabilities that the distance between the bathroom and the hall must be less than 5 feet (refer Ex.P.6 Series) as stated above, we do not find any serious discrepancy so as to disbelieve the eye-witnesses.

43. In SUMESH LAL VS. STATE OF BIHAR [2002 (3) S.C.C. 27], the Supreme Court has held that minor inconsistencies in the evidence of a witness cannot be a ground for disregarding the evidence, if otherwise acceptable as competent and truthful. In MULAKH RAJ VS. SATISH KUMAR [1992 (3) S.C.C. 43], the learned Judges of the Supreme Court have held that in a case founded on circumstantial evidence, the prosecution must prove all the circumstances connecting the unbroken chain of links leading to only on inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can be inferred from the proved circumstances, the accused would be entitled to the benefit. The further observation of their lordships is as follows :

"What is required is not the quantitative, but qualitative, reliable and probable circumstances to complete the chain connecting the accused with the crime. If the conduct of the accused in relation to the crime comes into question, the previous and subsequent conduct are also

relevant facts. Therefore, the absence of the ordinary course of conduct of the accused and human probabilities of the case also would be relevant. The court must weigh the evidence of the cumulative effect of the circumstances and if it reaches the conclusion that the accused committed the crime, then the charge must be held proved and the conviction and sentence must he confirmed." (emphasis added)

In STATE OF UTTAR PRADESH VS. ANIL SINGH [1988 (SUPPLEMENT) S.C.C. 68

6], the Supreme Court has held that merely because a prosecution witness exaggerated his part, that by itself, is no ground to discredit the prosecution case, if otherwise true. Their lordships observed in this context as follows :

"..... That invariably, the witnesses add embroidery to the prosecution story, perhaps for the fear of being disbelieved, but that is no ground to throw the case over board the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that inconsistencies or falsehood are so glaring as to utterly destroy the confidence in the witnesses."

In the above said judgment, their lordships also say that the appellate court does not disturb the concurrent finding of fact reached upon proper appreciation. Even if two views are reasonably possible, one convicting and the other acquittal, court will not interfere with the order of acquittal. Their lordships also observed as follows :

"But the court will not hesitate to interfere if the acquittal is perverse in the sense that no reasonable person would have come to that conclusion or if the acquittal is manifestly illegal or grossly unjust."

Their lordships also held that it is not proper to reject the case of the prosecution for want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. In RAJENDRA KUMAR VS. STATE OF UTTAR PRADESH (A.I.R. 1998 S.C. 2896), the Supreme Court held that in the light of the opinion of the doctor that the location and nature of the injuries found on the body of the accused were not consistent with the claim that he had tried to extinguish the fire on the deceased, but on the other hand, he had tried to hold the deceased by his hands and to prevent her from going out of the room, disbelieved the version of the accused. In this case, the case of the respondent/accused that he went into the bathroom to save his wife could not have been true since no attempt was made by him to extinguish the fire on the deceased as claimed by him.

44. In ARVIND SINGH VS. STATE OF BIHAR [2001 (6) S.C.C. 407], while considering the dying declaration made to her mother by the deceased, the Supreme Court has held as follows :

"Dying declaration ought to be treated with care and caution since the maker of the statement cannot be subjected to any crossexamination. The dying

declaration, has not been made to any doctor or any independent witness, but to the mother of the deceased who is said to have arrived at the place only in the morning. The mother admittedly is an interested witness, though that by itself would not discredit the evidence tendered in court, but the fact remains that the doctor's evidence, considering the nature of burns, creates a considerable doubt as to whether such a statement could be made half-an-hour before the death. Reliance of the High Court on such a dying declaration has to be scrutinized with a certain degree of caution. The victim is stated to have quietly told her mother the reason of her death, a few minutes before passing away. This is not acceptable, more so, having regard to declaration being made to the mother only. Further, it is in evidence that the deceased was extensively burnt, including her mouth, nose and lips and the doctor's evidence in that case was that she could not have survived for more than ten minutes in view of the extensive burns on her. This was another reason for not accepting her mother's evidence. Another fact was that the police had already arrived when mother and brother of victim reached. It was unlikely that the police would not make any attempt to have the statement of the deceased on their arrival, and instead to wait for her mother's arrival. It was also noticed that the deceased was in a fit condition to make the statement. In this context, it was held that dying declarations would have to be dealt with care and caution. Corroboration is not essential, but it is expedient to have the same in order to strengthen the evidentiary value of the declaration. Independent witnesses may not be available, but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence" (emphasis added).

The question of obtaining certificate of mental fitness of the deceased does not arise in this case. The statement of the deceased is said to have been made just before she passed her last breath. The prosecution witnesses, who were available at that time near the deceased, have clearly and cogently stated that the deceased was conscious and had made the said statement and we have no reason to doubt the correctness and the authenticity of the dying declaration in question.

45. In JAWAHARLAL VS. STATE OF MADHYA PRADESH [2001 (5) S.C.C. 300], the Supreme Court considered the various circumstances in a case of death by burning to establish the guilt of the accused. In that case also, the burns were not found all over the body. The torso part of the body which touched the floor of the room was not found burnt. Their lordships observed as follows :

"Therefore, it is quite possible that after this assault, the victim is said to have been physically rendered helpless so that there could be no resistance from her side. In that view of the matter, it is quite possible that the murder could have been committed by a single person. Some of the burn injuries were found to be postmortem. This is proved by the evidence of the doctor. In a case of circumstantial evidence, the chain of circumstances should be firmly established and it should have the tendency to unerringly point to the guilt of the accused."

46. In NANAHAURAM VS. STATE OF MADHYA PRADESH (A.I.R. 1988

), the deceased was struck by a dacoit by gunshot wounds. In the presence of the people gathered, the deceased told to take down his statement that he recognised the two accused among the dacoits and scribed the dying declaration with his thumb impression thereon. He died while being taken to the hospital. The said dying declaration was not mentioned in the F.I.R. The Supreme Court held in the facts and circumstances of that case that mere delay in recording the statement, which was indisputedly a lapse of the prosecution evidence. The Supreme Court approved the view of the High Court that the identity of the two appellants as being amongst the dacoits has been amply established by the evidence of witnesses and this has been reinforced by the oral and written dying declaration of the deceased. A Division Bench of the Orissa High Court, in BUDHIR SINGH VS. STATE (1983 CRIMINAL LAW JOURNAL 1020), held that if after searching scrutiny, the court is satisfied that the dying declaration represents a truthful version of the occurrence in which the deceased received the injuries which led to his death, a conviction can be founded thereon even in the absence of any independent corroboration.

47. In STATE (DELHI ADMINISTRATION) VS. LAXMAN KUMAR [1985 (4) S.C.C. 476], the Supreme Court considered the scope of an appeal against acquittal and held that the pre-ponderance of judicial opinion is that there is no difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the court keeps in view the presumption of innocence in favour of the accused and the same stands fortified by the order of acquittal, and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set on the materials on record, the acquittal may not be interfered with. Once evidence has been led and the court has proceeded to review the entire material, there is no limitation in law in the exercise of jurisdiction for the purpose of making a just decision. Their lordships also held in reference to the facts of that particular case that the deceased, in her dying declaration made contemporaneously, as deposed to by the witnesses, had stated that kerosene had been poured by the mother-in-law and the fire had also been lit by her. Though the Supreme Court was not prepared to base the conviction on the oral dying declaration alone, such dying declarations, in their opinion, were not to be totally rejected and the same can be used as corroborative materials.

48. In AJIT SAVANT MAJAGVAI VS. STATE OF KARNATAKA [1997 (7) S.C.C. 110], their lordships laid down seven principles that would govern to regulate the hearing of appeal by the High Court against an order of acquittal and also the scope of conviction solely on the circumstantial evidence. Their lordships held as follows :

"(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers it possesses while hearing an appeal against the order of conviction.
(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial court, if the said findings are against

the weight of the evidence on record, or in other words, perverse.
(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.
(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.
(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.
(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness-box.
(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

49. In RAMILABEN HASMUKHBAI KHRISTI VS. DAHYABHAI ASHABHAI KHRISTI PARMAL, in Criminal Appeal Nos.245 TO 247 of 2001, by a judgment dated 14.8.2002 reported in Judgment Information System (JUDIS), the Supreme Court dealt with a case which rested on dying declaration. Their lordships, in that case, referred to the judgment in UKARAM VS. STATE OF RAJASTHAN [2001 (5) S.C.C. 254], wherein it was held that though a dying declaration is entitled to great weight, yet it is worthwhile to note that as the maker of the statement is not subjected to cross-examination, it is essential for the court to insist that the dying declaration should be of such nature as to instill full confidence of the court in its correctness. The court should be satisfied that the deceased was in a fit state of mind to make the statement. Thus, in a case where the prosecution rested their case solely on the dying declaration, the court should be cautious and satisfied on the mental and physical fitness and capability of the declarant to make the statement. The ratio laid down in this judgment will not apply to the facts of the case on hand, since the prosecution does not rely solely on the dying declaration.

50. Applying the principles laid down in the above decisions, we find in this case that the dying declaration was made to the first rescuers of the deceased namely P.W.1 and P.W.5. P.Ws.3 and 4 were also there when the deceased had made the statement. Though P.W.5, an independent witness gave a statement to that effect under Section 161

Cr.P.C., he later went back to the extent to say that the deceased was alive and when she was taken out of the bathroom, she was murmuring, but he could not hear what she said. That did not exclude the other witnesses from hearing what the deceased said. P.W.5 did not say that the other witnesses also did not hear the statement of the deceased. Further, the medical evidence is also not to the effect that she should have died instantaneously. After putting off the fire, she was being taken to the hall and in the meanwhile, when asked

about the incident, she is said to have stated, implicating the accused. Considering the whole cumulatively, we find that there is no reason to discredit the eye-witnesses and the statement of the deceased.

51. In SHARAD BIRDHICHAND SARDA VS. STATE OF MAHARASHTRA (A.I.R. 19

84 S.C. 1622), the Constitution Bench of the Supreme Court, while considering the scope of Section 32(1) of the Indian Evidence Act, laid down the following five propositions :

(1) in view of the peculiar conditions of our society and the diverse nature and character of our people, it is necessary to widen the sphere of Section 32 to avoid injustice.
(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-tried formula of universl application so as to be confined in a straight-jacket. Distance of time would depend or vary with the circumstances of each case.
(3) The second part of Clause 1 of Section 32 is yet another exception to the rule that in criminal law, the evidence of a person who was not being subjected to or given an opportunity of being crossexamined by the accused, would be valueless because the place of crossexamination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.
(4) Section 32 does not speak of himicide alone but includes suicide also.
(5) Statements and letters directly related to a death would clearly fall within the four corners of Section 32 and therefore admissible.

In this context, their lordships held that the evidence of witnesses who are close relatives and friends of the deceased should be examined with very great care and caution. Their lordships held that if two views are possible that it may be a case of suicide and that it may be a case of murder and if both are equally probable, the prosecution case shall stand disproved. This has been held on the basis of the evidence in that case where it was held in paragraph 165 as follows :

"In the instant case, while two ingredients have been proved but two have not. In the first place, it has not doubt been proved that Manju died of potassium cyanide and secondly, it has also been proved that there was an opportunity to administer the poison. It has, however, not been proved by any evidence that the appellant had the poison in his possession. On the other hand, as indicated above, there is clear evidence of P.W.2 that potassium cyanide could have been available to Manju from the plastic factory of her mother, but there is no evidence to show that the accused could have procured potassium cyanide from any available source."

The Supreme Court also found that the circumstances afforded a greater motive to the deceased to commit suicide than for the accused to commit murder. In

our case, we do not find that there are two views on the death of the deceased and the evidence on record as well as the circumstances clearly point out that there is only one possibility namely the accused committing the murder.

52. In SANWAT SINGH VS. STATE OF RAJASTHAN (A.I.R. 1961 S.C. 715), their lordships held that while entertaining an appeal against acquittal, the High Court should have substantial and compelling reasons. Their lordships held that the High Court should not only have good and sufficiently cogent reasons or strong reasons after considering every matter on record having a bearing on the question of fact and the reason given by the court below in support of its order of acquittal in arriving at the conclusion on those facts, but should also express those reasons in their judgment which led to hold that acquittal was not justified. In MULUWA VS. STATE OF MADHYA PRADESH (A.I.R. 197 6 S.C. 980), it was held by the Supreme Court that when two views on evidence are reasonably possible, one taken by the trial court and the other reached by the High Court, in the absence of any material irregularity, manifest error or illegality, the High Court should not interfere with the order of acquittal, merely cause it thinks that it would, sitting as a trial Court, have taken the other view.

53. After considering the oral and material evidence cumulatively, including the written statement of the respondent, we find that the suicide theory of self-immolation is totally unsupportable. In the same manner, the accident theory put forward by the respondent that she might have prepared hot water for her daughter after bolting the bathroom door from inside and might have fell down also cannot be believed. As a matter of fact, in the statement of the accused under Section 313 Cr.P.C., he had clearly stated that it was a suicide. Whereas, there is an improvement in his written statement that it may be an accident. Once this theory of suicide and accident is ruled out, the respondent being the only person available at the house and considering the conduct of the respondent of coming out of the bathroom by jumping out it, instead of opening the bolt and coming out, without any clothes on and leaving for hospital for his own treatment without telling the witnesses as to what had actually happened or even without trying to rescue the deceased and further informing the doctor that he had suffered the injuries while lighting the stove, instead of telling that he suffered those injuries while trying to help his wife, if it was really true, as also his subsequent conduct by claiming unconsciousness while coming out of the bathroom are very difficult to believe, but only proves that it was the accused who has committed this dastardly murder of his wife. The conduct of the respondent is so unnatural and opposed to ordinary human conduct, leading us to disbelieve his defence theory and coming to the only conclusion that the accused ought to have committed the murder. Therefore, assuming for the sake of argument that the dying declaration given by the deceased has to be eschewed, still the other circumstances are overwhelming to point out that it is the accused who is guilty of this crime.

54. The learned Sessions Judge, in paragraph 49 of his judgment, has found that there was nothing unreasonable about the conduct of the accused for his inability to tell the reasons for his sustaining the injuries when P.W.1 asked him. According to the learned Judge, it was so

"because he was in a disturbed state of mind as his wife was burning and he too had sufficient burns. That apart, an auto was arranged by P.W.1 and other persons who had collected there and he was sent to the hospital." The learned counsel for the respondent submits that the accused suffered more than 38% burn injuries. But, he was not able to explain as to how those injuries had been caused and the attempts made by him and the manner in which the injuries had been caused to him while he is alleged to have attempted to save his wife. It is unfortunate that the investigating agency has not examined the doctor who had issued Ex.P.14, the report against the accused. However, the accused had admitted to have climbed over the wall into the bathroom and came out of the bathroom by jumping over the wall on his failure to save his wife and that he suffered the injuries while trying to save her and since the injuries have been properly admitted by him, it is for the accused to explain as to how those extent of injuries had been suffered by him while trying to save the deceased. In the absence of any proper explanation and from the facts and circumstances of the case, it is clear that it is the accused who had hit the deceased, made her to lie down, poured kerosene on various parts of her body and lighted with 18 match sticks, each part of the body and when the flames started coming, he ought to have been also caught in the fire and suffered the burn injuries.

55. We have also found that we have no reason to disbelieve P.Ws.1, 3 and 4 as to the statement of the deceased and taking into account the cumulative evidence on record, we have to hold that the accused is guilty of the crime. We find that the reasoning of the learned Sessions Judge is totally unsatisfactory. In paragraph 48 of his judgment, the learned Judge says that if the intention of the accused was to get rid of her by his brutal act, he would not have chosen the morning time, that too after 9 'o clock, opening the gate especially for her kith and kin to witness it. So much so, it shows his innocence to save her life than to put an end to her. The finding of the learned Judge that the burn injuries found on the body of the accused show his genuine intention to save her, and as the bathroom was bolted from inside and as he was also burning, it was not feasible for him to save her and therefore, he retraced his steps. We are unable to appreciate the reasoning of the learned Judge. Assuming for the sake of argument that the accused could not save his wife, his conduct in not informing others who had gathered there to save his wife, but instead, taking an auto to go to the hospital for taking treatment for himself and informing the doctor that he sustained the injuries while lighting the stove only show the guilty mind of the accused and his conduct was not to save his wife, but to see to it that she dies of the burns. In the written defence statement, he contradicts by stating that he could not talk and further improvement is made in the defence counsel that he was not conscious. This is fortified by the answers of the accused to the questions put as to his response for the statement of the witnesses that the deceased is said to have told them about his beating and pouring kerosene on her, his reply was that it was not possible for her to say so. Even accepting the case of the respondent that he came out of the bathroom unable to save his wife, he cannot say that she was dead because she was still burning and he had left the scene and the prosecution witnesses were there to rescue her. When the statement of the deceased was put to him, the his reply was, "I do not know whether she was alive or not", implying that she

could not have been alive to make such a statement.

56. We have taken into account every circumstance and the evidence and considered them so closely and carefully so as to satisfy ourselves whether the prosecution has established the guilt of the accused beyond any reasonable doubt. We are to point out that the investigation in reference to the non-examination of the Doctor who had issued the Medico-Legal Certificate (Ex.P.14) and the lack of evidence regarding the manner in which the incised injury was caused to the deceased are not satisfactory. However, as discussed above, we are fully satisfied that the oral and documentary evidence, combined with the defence stand of the respondent, as also the various circumstances in the chain of events, clearly establish the guilt of the accused and rule out the reasonable likelihood of the innocence of the accused. We are clear, from the above, beyond doubt as to the involvement of the accused/respondent in committing the murder of his wife.

57. For all these reasons, we hold the accused guilty of the charge of murder and he deserves the punishment for the same. Accordingly, we set aside the judgment of the learned Third Additional Sessions Judge, Pondicherry, find the accused/respondent guilty of the charge against him that the accused/respondent did commit murder intentionally, causing the death of his wife by hitting his wife with a blunt object, pouring kerosene on her and setting her on fire, thereby committing an offence punishable under Section 302 I.P.C. We impose a punishment of imprisonment for life on the accused/respondent. The appeal is accordingly allowed.

(P.S.M., J.) (M.C., J.)
04..09..2002

Index : Yes
Internet : Yes

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To

1. The III Additional Sessions Judge, Pondicherry.

2. The III Additional Sessions Judge, Pondicherry
through Principal Sessions Judge, Pondicherry.

3. The District Collector, Pondicherry.

4. The Inspector General of Police, Pondicherry.

5. The Public Prosecutor, Pondicherry.

6. The Inspector of Police,
D. Nagar Police Station,
Pondicherry.